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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Cesar G., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CESAR G., Defendant and Appellant.	A149380, A151515 (San Francisco City and County Super. Ct. No. JW15-6052; Marin County Super. Ct. No. 26211A)

Sixteen-year-old Cesar G. attacked two unarmed men with a machete. When police brought him to the hospital to see if the victims could identify him, Cesar warned one victim he "better not snitch." The juvenile court found Cesar attempted to murder one victim, assaulted both with a deadly weapon and with force likely to cause great bodily injury, tried to dissuade a victim from reporting a crime, and personally inflicted great bodily injury on one victim. The court committed Cesar to the Division of Juvenile Justice (Division) for a maximum term of nine years four months. Cesar challenges the jurisdictional findings of attempted murder and dissuasion, asserts ineffective assistance of counsel, and contests other orders related to the disposition. We affirm.

BACKGROUND

A.

Thomas Foremski and David Dichtel were walking on Divisadero Street in San Francisco at about 9:30 p.m. on July 30, 2015. They passed a group of people, one of

whom asked if they knew of any good bars in the area. Dichtel said no and kept walking, but Foremski replied, "For 15 year olds?" The initial speaker immediately became angry, cursed, and started throwing punches at Foremski. Foremski was also hit from behind and the side, and Dichtel was hit from behind.

Dichtel testified he was hit across the back of his head with something metal. He fell and may have been hit again, losing consciousness a couple of times. He tried to get away but fell again and was hit and kicked while on the ground. Dichtel saw someone approach from the street with a long object in his hand as a second person approached from another direction. Dichtel grabbed an A-frame parking sign and swung it, causing the attackers to back off, and he was not hit again. When an ambulance fortuitously drove by, the attackers fled. Dichtel saw one attacker throw something under a car, which he retrieved and carried over to Foremski, who was being assisted on the sidewalk. It was a machete.

Dichtel had a long cut on the back of his head, deep enough to expose his skull and require 15 stitches in two layers (on the inner tissue and his scalp); a cut on the front of his head that required about 12 stitches; a cut on his hand that required two to three stitches; a shallow stab wound on his upper left back, a broken nose, a cracked eye socket; and a persistent visual impairment.

Foremski testified he heard the initial speaker demand money at the beginning of the attack. Foremski fell when he was hit from behind, felt blood pouring down his neck, and started to lose consciousness. He managed to get up and into the street. When he saw Dichtel being attacked on the sidewalk, he went back and yelled at the attackers to stop. He retreated to the street again and was followed by a man in dark clothes who was taller and much larger than the initial speaker. When that person fell, Foremski got on top of him and held him down. Foremski pushed away a large blade, which he later identified as the machete, that was lying near the person under him, who was not struggling much. Another figure approached Foremski, who then was hit and lost consciousness. When Foremski came to, he was sitting on a sidewalk getting assistance. The only weapon he saw during the incident was the machete.

Foremski had two stab wounds in his back; one wound was about a half-inch wide and caused his lung to collapse. Foremski had scabbing and swelling on his elbow and knee; a foot-long scratch on his abdomen; heavy bruising on the front, back, and lower right side of his torso and near one eye; and a cut on the back of his head that required stitches.

Robin Taylor, a nurse-practitioner, was driving on Divisadero when she saw three people scuffling in the street median. One person—an older man—fell into the street. Taylor moved her car into that lane and turned on her hazard lights to protect the man from being hit by a car. The other two men attacked the man on the ground—one repeatedly kicking him in the head while the other hit him in the back and side 15 to 40 times with a cylindrical object "about half the length of a [baseball] bat" that he swung overhand or sideways. The victim was not resisting. The force of the blows to both the victim's head and his side moved his body "quite a bit," and he was trying to curl up to protect himself. Taylor saw only one attacker use the weapon; he did not pass it off to another person. Taylor said it "was the most violent thing I've ever seen," and "I thought the man was being killed." The attackers fled, and Taylor saw two people walk the victim to the sidewalk.

Zhenbo Zhang heard yelling and saw an "old white male" being beat up on the sidewalk by two or three men. The man grabbed a parking sign and swung it to defend himself. One of the attackers took out a metal stick, which Zhang later identified as the machete, and hit the man forcefully with it around the head six or seven times. The man got up, and the attackers chased and continued to hit him until he fell again. Another "older white male," who "looked kind of like the person who was being attacked" came to the man's aid, grabbing and hitting the attackers, then ran into the street where he got one of the attackers on the ground. A second attacker went behind the older White male in the street and got him on the ground. The attackers stood up and one went over to the man sitting on the sidewalk and hit him a few times with the machete. The attacker with the machete swung it hard enough that Zhang heard a "metal noise," like "*Ting. Ting*."

Zhang was not sure if the machete was used in the street, and he could not identify Cesar as one of the attackers.

Surveillance video showed Cesar throw the machete under a car and Dichtel retrieve it. The machete had an 18-inch blade (2.25 inches across at its widest) and a 4.5-inch handle, which showed rust and no visible blood. The edge of the blade was not sharp enough to slice through paper, but it could cut something if used with force.

Cesar voluntarily turned himself in to police shortly after the incident. His clothes were bloodstained. He gave an audiotaped statement to police at the scene, which was played for the court. Cesar said he brought the machete to the area to scare and rob someone named Chance, who had disrespected a murdered friend of Cesar's, but Chance escaped. Cesar was with two other men: Donald Scobie, who was detained and later released by police, and a person Cesar refused to identify other than to say he is "basically" a cousin.

According to Cesar, during the incident with Chance, Cesar dropped his phone, and a passerby told him two older White men had picked it up. Cesar asked Dichtel and Foremski for his phone, but they denied having it, and one of them pushed or punched him. Cesar pushed or punched back and was grabbed or pushed to the ground. He hit his head on the curb and briefly lost consciousness.

When Cesar regained consciousness, he said one of the White men was on top of him and hit him twice in the face. Cesar called for Scobie, who came over and hit the man in the face. After the man fell, Cesar got up, took out his machete, and hit him twice in the face, shoulder, and "maybe in the head, too," with the flat side of the machete blade or the handle. Then Cesar fled and threw the machete under a car.

When an officer interviewing Cesar said both the victims were hit multiple times, one was stabbed in the chest, and both were seriously injured, Cesar repeated that he only "smacked" one man in the face twice with the machete, threw the machete, and ran away. Cesar denied that he or Scobie had a knife other than the machete or that they stabbed anyone, and he speculated the unnamed attacker might have caused their injuries.

The interviewing officers testified that Cesar showed no indications of impairment during the interview.

Police then took Cesar to the hospital to see if the victims could identify him as one of the attackers. Cesar told Dichtel, "Fucking snitch. Nigga better not snitch brah," and other similar comments. Dichtel was pretty sure, but not positive, Cesar was at the scene. Foremski could not identify Cesar as one of the attackers.

B.

Cesar was the only person charged in the incident. The court sustained allegations of attempted murder of Foremski with personal use of a deadly weapon (Pen. Code, §§ 187, subd. (a), 664, 12022, subd. (b)(1)); assault with a deadly weapon and with force likely to cause great bodily injury as to both victims (*id.*, § 245, subd. (a)) and personal infliction of great bodily injury as to Dichtel (*id.*, § 12022.7, subd. (a)); and dissuading Dichtel from reporting a crime (*id.*, § 136.1, subd. (b)(1)). The sustained charges were deemed felonies. All other counts and allegations (including a charge of second degree robbery of Foremski) were found not true. The court expressly found Cesar personally and directly committed the crimes.[1]

C.

Cesar's case was transferred for disposition to Marin County, where his mother was then living. The probation department and prosecutor sought commitment to the Division; Cesar sought probation. The court declared Cesar a ward and ordered him transported to the Division for a 90-day diagnostic evaluation then returned for final disposition.

On May 9, 2016, however, after Cesar's counsel declared a doubt about Cesar's competence, the court suspended Cesar's transfer to the Division and appointed an expert. An evaluation filed a month later concluded Cesar was competent. The court denied Cesar's request for funds to retain an expert on competence. In July 2016, the

[1] Cesar filed a premature appeal from the jurisdiction findings, which we dismissed. (See *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [appeal may be taken from final disposition order].)

court reconsidered and set aside its earlier decision regarding Cesar's competence, explaining that it had made the order without considering the requirement, under Welfare and Institutions Code section 709, that the court first find substantial evidence that raises a doubt as to the minor's competency. (See Welf. & Inst. Code, § 709, subd. (a).) The court found no substantial evidence of incompetence, and it ordered the 90-day evaluation to proceed.

Cesar filed a petition for writ of mandate in this court, and his transfer to the Division was stayed. Cesar then moved to modify the juvenile court's order (Welf. & Inst. Code, § 778) that he be detained pending evaluation because the evaluation was effectively unavailable while his writ petition was under consideration. The September 6, 2016 denial of that modification motion is before us in consolidated appeal No. A149380; however, because Cesar makes no arguments regarding the denial in his appellate briefs, we deem appeal No. A149380 abandoned and dismiss it. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544 [appeal raising no arguable issues may be dismissed without a written opinion].) We previously denied Cesar's petition for writ of mandate with respect to the order.

The juvenile court ordered Cesar's transfer to the Division for diagnostic evaluation. The March 2017 diagnostic report opined Cesar was amenable to treatment at the Division. Cesar's retained counsel unsuccessfully sought funds to hire clinical psychologist, Dr. Amy Watt, as an expert on disposition issues. He withdrew from representation, claiming effective assistance could not be provided without the expert funding. The public defender took over the case and obtained Dr. Watt's evaluation of Cesar. Dr. Watt recommended Cesar's release to the community with services.

At final disposition on May 25, 2017, the court ordered Cesar committed to the Division. Finding mitigating circumstances in Cesar's family history, the court reduced Cesar's maximum term of confinement to nine years four months. The court used low terms in calculating the maximum term of confinement. Cesar's challenge to the final disposition order is before us in consolidated appeal No. A151515.

DISCUSSION

A.

Intent to Kill

Cesar argues substantial evidence does not support a finding he intended to kill Foremski. We disagree.

In juvenile proceedings involving criminal acts, we apply the same standard of review that we apply in adult criminal trials. (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1080.) We assume the existence of all reasonable inferences in support of the judgment. (*People v. Avila* (2009) 46 Cal.4th 680, 701.) Viewing the evidence in the light most favorable to the prosecution, the question is whether " '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (*Ibid*.) In an attempted murder case, direct evidence of a defendant's intent is rarely available, but it may be inferred from the defendant's acts and the circumstances of the crime. (*Ibid*.)

Cesar contends there is no evidence the machete caused the wound that collapsed Foremski's lung, which Cesar claims was "the only life-threatening injury." Because the blade of the machete is 2.25 inches at its widest part, says Cesar, it could not have caused a one-centimeter (less than 0.5 inch) incision in Foremski's back. Also, the machete's blade was dull and did not have blood on it. Cesar draws on ambiguities, conflicting evidence, and his own statements to police to suggest an alternative scenario in which, unseen by anybody, his cousin or some other person in the melee stabbed Foremski with a thinner knife, thus causing his lung to collapse.

Cesar's arguments are misplaced. An intent to kill may be inferred regardless of whether the victim's wounds are life-threatening. (*People v. Avila, supra,* 46 Cal.4th at p. 702.) The inference is drawn from the defendant's acts and the circumstances of the crime (*id.* at pp. 701–702), not a narrow focus on a single wound. Cesar also overlooks our duty to accept all reasonable inferences in favor of the judgment. The question is whether the circumstances reasonably support the juvenile court's finding, not whether

they might also support Cesar's alternative theories. (*Id.* at pp. 702–703; *People v. Thomas* (1992) 2 Cal.4th 489, 514.)

The circumstances support the juvenile court's findings that Cesar attacked Foremski with the machete and intended to kill him. Cesar admitted that he brought the machete, hit one of the victims with it in the shoulder, face, and "maybe in the head, too," and threw the machete under the car when he ran away. The machete was the only weapon found at the scene. Nobody saw another weapon being used. Nobody saw other attackers use the machete. Even in Cesar's version of the incident, he was the only person who used the machete. The machete was over 22 inches long with a wide, metal blade that ends in a point where the curved edge of the blade meets the straight back. An investigating police officer testified that the machete was dull but had a sufficient edge to cut something if swung forcefully enough. Taylor testified the person with the machete swung it hard, repeatedly. Taylor saw a victim (Foremski) in the street, in a fetal position, being struck between 15 and 40 times so hard that "his body moved quite a bit from the force of the blows." She thought she was watching a man being killed. Cesar's clothes were bloodstained. Sufficient evidence supported the trial court's findings. (See *People v. Avila, supra,* 46 Cal.4th at pp. 701–703 [holding evidence sufficient to establish intent where "defendant repeatedly attempted to stab . . . an unarmed and trapped victim, and succeeded in stabbing him in the arm and leg"]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1114 [rejecting argument that defendant only intended to stab, not kill, when he forcefully stabbed a woman in the abdomen].)

B.

Great Bodily Injury

Similarly, we reject Cesar's contention (in a supplemental brief) there was insufficient evidence to support the personal infliction of great bodily injury enhancements as to the assault on Dichtel.

Cesar argues the evidence is insufficient to show he was the person who assaulted Dichtel, but the evidence amply supports an inference he did. Cesar admitted he had the machete. Dichtel testified he was hit across the back of his head with something metal.

Zhang testified he saw someone hit an old man on the sidewalk (inferably Dichtel) repeatedly around the head with a "metal stick" he later identified as the machete. The long, deep cut on the back of Dichtel's head was consistent with an injury caused by a machete. As noted above, the machete was the only weapon found at the scene; no one saw another weapon used; no one saw other attackers use the machete; and Cesar's clothes were bloodstained.

C.

Dissuasion

Cesar argues there was insufficient evidence of dissuasion under Penal Code section 136.1, subdivision (b)(1). We disagree.

Penal Code section 136.1, subdivision (b)(1), prohibits any attempt to dissuade the victim of a crime from "[m]aking any report of that victimization to any peace officer or state or local law enforcement officer." A report generally means "notifying the authorities that the crime has occurred and providing information about the offense." (*People v. Fernandez* (2003) 106 Cal.App.4th 943, 948.) Officer Cotter brought Cesar to the hospital for a reverse cold show. Dichtel was in a hospital bed. As they approached, Cesar said to Dichtel: "Fucking snitch. Nigga better not snitch brah. Fucking nigga." When Dichtel and Cesar were facing each other, Cesar repeated the statement. Worried that Dichtel might be intimidated by Cesar, Cotter told Cesar to say nothing more. This evidence is sufficient.

Cesar contends, however, this particular statute applies only to a defendant who attempts to dissuade a witness before the defendant is arrested. We assume Cesar was under arrest at the time. But the statute does not limit the offense to people who have been arrested; it covers "every person who attempts to prevent or dissuade" a victim from making "any report" of the victimization. (Pen. Code, § 136.1, subd. (b)(1).) Cesar cites *People v. Fernandez, supra,* 106 Cal.App.4th at page 950, in which the court states that the statute covers "pre-arrest" conduct. But that case concerned a defendant who attempted to influence a witness's testimony at a preliminary hearing, which is covered by a different statute. (*Fernandez,* at pp. 947–951; see Pen. Code, § 137, subd. (c).) The

decision turned on the difference between making a report and testifying at a preliminary hearing, not on whether the defendant had been arrested. (*Fernandez*, at pp. 950–951; see *id.* at pp. 945–946, 948.)

Finally, we reject Cesar's argument that he could not have intended to dissuade Dichtel from reporting the crime because it made no sense to do so given that a report of the crime had already been made. The court could easily have determined that Cesar meant to dissuade Dichtel from reporting additional information. (See *People v. Pettie* (2017) 16 Cal.App.5th 23, 54.) Likewise, we reject Cesar's suggestion his language was ambiguous. It was not.

D.

Incapacity

We summarily reject Cesar's contentions that he lacked the ability to form the specific intent for both attempted murder and dissuasion because of his immaturity, intoxication, or alleged head injury. The officers' testimony and Cesar's audiotaped statement provide substantial evidence that he was sober and spoke cogently shortly after the attack, which supports reasonable inferences he was not impaired during the attack or at the time he confronted Dichtel at the hospital.

E.

Ineffective Assistance of Counsel

Cesar claims his counsel was ineffective for several reasons. We reject the arguments, primarily because Cesar does not demonstrate how any alleged errors prejudiced him.

Criminal defendants have a constitutional right to the assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 684–686; *People v. Ledesma* (1987) 43 Cal.3d 171, 215.) To establish ineffective assistance of counsel, a defendant must show (1) counsel's performance was so deficient that it fell below an objective standard of reasonableness, under prevailing professional norms, and (2) the deficient performance was prejudicial, rendering the results of the trial unreliable or fundamentally unfair. (*Strickland*, at pp. 688, 692; *Ledesma*, at pp. 216–218; see *People v. Mickel* (2016)

2 Cal.5th 181, 198.) Generally, "prejudice must be affirmatively proved" by the defendant (*Ledesma*, at p. 217), and "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." (*Strickland*, at p. 697 [if easier to dispose of claim on lack of sufficient prejudice, "that course should be followed"].)

1.

Cesar contends his counsel failed to use medical records to demonstrate the machete did not cause Foremski's collapsed lung and, additionally, that Foremski misperceived the events.

Cesar has not demonstrated prejudice. The medical records indicate the wound that caused Foremski's collapsed lung was less than a half-inch wide. This is consistent with Foremski's testimony that the wound was about a half-inch wide, and pictures of the wound were admitted in evidence. Moreover, there was no evidence the machete could *not* have caused the wound; indeed, the machete curves to a point at the end of the blade. Cesar's counsel argued, nevertheless, somebody else may have stabbed Foremski in the back; Cesar told police he faced Foremski (suggesting that he could not have stabbed him in the back); and Foremski's stab wound would have been wider if caused by the machete. It would not have made a difference if he had also cited the medical record on the precise size of the wound. Cesar's bigger problem was his own admission he had the machete, and an eyewitness testified the attacker with the machete brutally battered Foremski, on both his side and his back, between 15 and 40 times while Foremski was laying in the street.

Similarly, Cesar argues his counsel failed to use evidence from the medical records that Foremski had drugs (methamphetamine and possibly opiates) in his system. But impeaching Foremski on his perception of events or his credibility would have had marginal benefits, at best. Foremski could not identify Cesar as one of the attackers, candidly admitted he lost consciousness after he briefly held one attacker down in the street, and could not recall how he got his wounds. The only charge hinging solely on Foremski's testimony was the robbery allegation, which the court did not sustain.

2.

Next, Cesar argues his counsel erred by failing to hire an expert to evaluate his mental capacity to form a specific intent to kill.

Cesar again has not demonstrated prejudice. Cesar cites a psychological evaluation by Dr. Watt for the proposition that Cesar "did not appear to have the capacity for the requisite intent." Dr. Watt's report does not say that anywhere. She did not purport to determine Cesar's capacity to form an intent to kill. Rather, the report offers recommendations on his future disposition: Dr. Watt concluded there is a good chance Cesar could be managed in the community with probation, mental health treatment, and other support.

Citing case law, Cesar claims that a mental health expert was needed because "a 16-year-old such as appellant is unlikely to have the capacity to form and harbor the intent to kill." The cases he cites do not say that, much less establish it as a fact that applies to Cesar. (E.g., *Roper v. Simmons* (2005) 543 U.S. 551, 568 [holding Eighth Amendment prohibits execution of juveniles].)

3.

Cesar also maintains his counsel garbled a viable self-defense theory and highlighted facts that were prejudicial to his defense.

We disagree that Cesar could have successfully established self-defense. Cesar points to evidence Foremski punched Cesar when Foremski thought he was going to be robbed (before he was attacked), and Dichtel threw one or more punches during the incident. Even assuming Foremski or Dichtel first shoved or punched Cesar, a self-defense argument was futile given the minimal force allegedly used against Cesar, which caused no substantial injuries (Cesar declined medical attention shortly after the incident), and the unreasonable violence he deployed in response. (See *People v. Beyea* (1974) 38 Cal.App.3d 176, 190, disapproved on other grounds by *People v. Blacksher* (2011) 52 Cal.4th 769, 808; CALCRIM No. 505.)

We also reject Cesar's complaints that his counsel highlighted facts supporting the victims' testimony (e.g., the attack was "undeserved unprovoked" and a "very very

serious case"; victims were "minding their own business"). An attorney may reasonably concede some measure of culpability in a defendant's case and focus the court's attention on weaknesses in the prosecutor's case. (See *In re Alcox* (2006) 137 Cal.App.4th 657, 669.) Given Cesar's admitted involvement in the attack, it was not unreasonable for Cesar's counsel to focus on the fact that Foremski and Dichtel were attacked by more than one person, and neither could identify his client as the perpetrator of their injuries. (See *People v. Bolin* (1998) 18 Cal.4th 297, 334–335 [holding counsel was not ineffective by conceding client had some liability].)

4.

Finally, Cesar points to closing argument, in which his counsel made incorrect statements about the element of intent.

Defense counsel made conflicting statements about the intent required for assault: "each is responsible for the totality of what occurred"; "[t]here was specific intent to do a lot of damage[—t]hat's the assault"; "the intent was to create great bodily injury[, a]nd that was shared by that group." (See *People v. Williams* (2001) 26 Cal.4th 779, 788 [assault is a general intent crime].) He also made statements suggesting the specific intent required for attempted murder and robbery could be satisfied by evidence that anyone in the group of attackers had the intent: "[T]here's nothing *in the group* that was evidence of specific intent to rob"; "I don't see evidence beyond a reasonable doubt in this record that *the intention of that group* or specifically of my client was to kill anybody"; and, when discussing attempted murder, "But *all the people in the group are responsible for all the injury*." (Italics added; see *People v. Pettie, supra,* 16 Cal.App.5th at p. 52 [aider and abettor to attempted murder must personally harbor specific intent to kill]; *People v. Beeman* (1984) 35 Cal.3d 547, 560, 562–563 [aider and abettor must share specific intent to facilitate a robbery].)

Nevertheless, any misstatements were harmless. The case was tried to the court. The court expressly referenced instructions that correctly stated the law. It found Cesar personally committed the sustained criminal allegations. In the absence of evidence the

court failed to follow the law, we must presume that it did. (*In re Julian R.* (2009) 47 Cal.4th 487, 499.)

F.

Competency

Cesar argues the trial court erred by vacating competency proceedings it had initiated earlier. Specifically, he maintains the juvenile court (1) lacked authority to reconsider the May 9, 2016 order suspending disposition proceedings for a determination of Cesar's competence; and (2) abused its discretion when it declined to declare doubt at the May 9, 2016 hearing.

Due process requires a criminal defendant to be mentally competent to stand trial. (*In re John Z.* (2014) 223 Cal.App.4th 1046, 1053.) The minor in a wardship proceeding is presumed competent and bears the burden of proving incompetency. (*In re R.V.* (2015) 61 Cal.4th 181, 197.) In California juvenile proceedings, Welfare and Institutions Code section 709 governs competency determinations. "If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended." (Welf. & Inst. Code, § 709, subd. (a).)

A counsel's doubt as to the minor's competency is entitled to some weight, but it is not dispositive. (*People v. Johnson* (2018) 21 Cal.App.5th 267, 276.) Counsel "must make some other substantial showing of incompetence that supplements and supports counsel's own opinion. Only then does the trial court have a nondiscretionary obligation to suspend proceedings and hold a competency trial. [Citation.] Otherwise, we give great deference to the trial court's decision not to hold a competency trial." (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 465.)

1.

Cesar is correct that, once a juvenile court finds substantial evidence of a minor's incompetence, it must proceed with the section 709 process before reinstating proceedings. (See *In re John Z., supra*, 223 Cal.App.4th at pp. 1054–1058.) Here, however, the juvenile court never made the requisite finding. (See *People v. Visciotti*

(1992) 2 Cal.4th 1, 34–36 [determining court did not declare doubt about defendant's competency despite appointing experts].)

First, at the May 9, 2016 hearing, the court acknowledged that counsel had raised the issue, but the court did not make a finding of substantial evidence. Rather, the court indicated it did not know whether the information cited by counsel was sufficient: "Counsel has pinpointed items of competency that are of concern at this time. They have not necessarily been identified previously when Cesar has been in court with us, but there is an attorney here who's handling his case, and . . . that issue has been raised. And it is correct that the Court can make a decision based on substantial doubt, but in this case it sounds to me like there has been some observation and some collection of information that *may or may not reveal exactly what level of competency . . . Cesar has*. [¶] . . . The Court is going to suspend [Cesar's transfer to the Division], and as rapidly as possible, the Court wants a competency evaluation done." (Italics added.)

Second, lest there be any doubt, when the court later reconsidered the May 9, 2016 ruling, it explained that it had erred precisely because it had not made the finding: "The Court made this order without consideration of the Welfare and Institutions Code [section] 709 requirement that the Court find substantial evidence that raised a doubt as to" Cesar's competence. The court then found "that substantial evidence did not exist to raise a doubt."

We accept the court's clarification of its own prior ruling. By necessity as well as by statute, trial courts have latitude to correct their mistakes. (See Welf. & Inst. Code, § 775 [juvenile court may change, modify, or set aside orders]; see *People v. Nesbitt* (2010) 191 Cal.App.4th 227, 239 [" ' "[i]n criminal cases, there are few limits on a court's power to reconsider interim rulings" ' "].) Having never found substantial evidence of incompetence, the court did not trigger the evaluation and hearing process, and it therefore had discretion to reverse its prior order.

2.

The court did not abuse its discretion when it declined to declare doubt at the May 9, 2016 hearing because there was no substantial evidence of Cesar's incompetence

at that time. Cesar's counsel represented that Cesar suffered from attention deficit hyperactivity disorder, depression and a sleep disorder that required medication; had an individual education plan at six years old that identified auditory processing issues affecting his verbal comprehension; and suffered traumatic brain injuries one and four years previously that were causing headaches and blackouts. The purported sources of this information were counsel's interviews with Cesar and his mother and a psychologist's evaluation of Cesar in juvenile hall that morning, which identified "concerns with the seriousness of [Cesar's] [attention deficit hyperactivity disorder] symptoms."

Defense counsel did not link any of this evidence to the competence standard, and we see no obvious connection. Attention issues, headaches, memory lapses, and auditory processing issues are not inconsistent with an understanding of the proceedings or an ability to assist counsel. (*People v. Sattiewhite*, *supra*, 59 Cal.4th at p. 466 [no substantial evidence of incompetence where defendant did not show that his brain damage, low IQ, and learning disabilities interfered with his ability to understand criminal proceedings or assist counsel].) Additionally, other evidence tended to show Cesar's competence: Cesar's lucid statements to probation about the offense; no problems reported in juvenile hall; and no observed problems at prior court hearings. On this record, the court did not abuse its discretion in declining to declare a doubt about Cesar's competence. (See *id.* at p. 467 ["we defer to the trial court, which heard the penalty phase evidence, observed defendant and the witnesses, and did not form a doubt about defendant's mental competence"].)

G.

Funds for Expert

We reject Cesar's argument that the court erred in denying him funds to hire an expert, Dr. Watt, to review the Division diagnostic report and recommend disposition alternatives.

An indigent defendant has a right to ancillary services necessary to present his defense, such as expert witnesses. (*Ake v. Oklahoma* (1985) 470 U.S. 68, 76–77;

Corenevsky v. Superior Court (1984) 36 Cal.3d 307, 320.) The defendant bears the burden of showing that such services are necessary. (*Corenevsky,* at p. 320.) We review a trial court's denial of funding for abuse of discretion. (*Id.* at p. 321.)

The trial court did not abuse its discretion here. First, in the sentencing phase, as opposed to the guilt phase, a defendant is generally not entitled to funding for experts. (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 907–920.) While there may be an exception when the defense requires an expert to rebut prosecution experts (*id.* at p. 917), in this case the prosecution did not present expert testimony at sentencing.

Second, Cesar has not demonstrated he was prejudiced by the trial court's decision. Following the court's order denying funds to hire Dr. Watt, Cesar's retained counsel withdrew from the case, and his appointed counsel hired Dr. Watt without funding from the court. Dr. Watt reviewed the Division's diagnostic report and recommended an alternative disposition. Cesar has not identified—at trial or on appeal—any deficiency in the performances of appointed counsel or Dr. Watt. Indeed, the court carefully considered Dr. Watt's recommendations. Any error was harmless. (See *People v. Worthy* (1980) 109 Cal.App.3d 514, 523 [any error by the trial court's denial of funds for expert was harmless where defendant did not demonstrate prejudice].)

H.

Commitment to Division

Cesar argues the court abused its discretion by committing him to the Division because he was not safe there. He says, while at the Division, he was targeted by gang-affiliated youth who attacked him twice and injured him once. Citing statistics from the Internet, Cesar characterizes the entire Division as "a dangerous place populated largely by adult gang members" and argues the court knowingly put him "in harm's way."

First, we summarily reject Cesar's unfounded suggestion that the Division is incapable of ensuring Cesar's safety.

Second, no evidence shows the court ignored Cesar's safety. It is one of several factors the juvenile court must consider. (Cal. Rules of Court, rule 5.790(h)(3).) In the

absence of contrary evidence, we must assume that it did so. (*In re Julian R., supra*, 47 Cal.4th at pp. 498–499.)

Third, more generally, the court did not abuse its discretion in committing Cesar to the Division. We have reviewed the record. The court carefully considered the evidence, including Dr. Watt's evaluation, and reasonably found Cesar would benefit from the structured setting of the Division and would be at risk of committing more violent acts if placed in the community with a lower level of supervision. (See *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396; Welf. & Inst. Code, § 734.)

I.

Term of Confinement

Cesar raises two issues related to his term of confinement. Neither has merit.

First, Cesar argues remand is necessary because the juvenile court misunderstood its discretion in setting the maximum term of confinement. Cesar cites no evidence that the court misunderstood the law; instead, he cites statements from defense counsel and *assumes* the court agreed with those statements. In the absence of contrary evidence, we must assume the court knew the law and applied it correctly. (*In re Julian R., supra*, 47 Cal.4th at p. 499.)

Second, Cesar argues the prosecution failed to give him proper notice it intended to ask the court to aggregate the maximum term to include a prior sustained petition for grand theft. Welfare and Institutions Code section 726, subdivision (d)(3) authorizes the court in a wardship proceeding to "aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602 . . . ." However, "due process requires notice of the juvenile court's intention in order to provide the minor with a meaningful opportunity to rebut any derogatory material within its prior record." (*In re Michael B.* (1980) 28 Cal.3d 548, 553.) Cesar points out that the petition for the Foremski/Dichtel incident did not include a checkmark next to the statement, "Petitioner intends to move for an increase of the maximum term of confinement by aggregating the terms of all previously sustained petitions . . . ."

Nevertheless, Cesar received adequate notice. The petition omitted the checkmark, but on the prior page it stated, "The minor is hereby notified . . . that he/she may be committed pursuant to [Welfare and Institutions Code section 726] for a period of time amounting to the total of all custodial time not yet served for the current offense and for all previously sustained petitions." While Cesar argues the latter notice was inadequate because it merely said the terms *may* be aggregated, courts have approved similar forms of notice. (See, e.g., *In re Edwardo L.* (1989) 216 Cal.App.3d 470, 479.) Moreover, no prejudice occurs where the minor is otherwise informed of the intent to aggregate and has an opportunity to be heard on the issue. (See *In re Ernest R.* (1998) 65 Cal.App.4th 443, 449–450; *In re Ronald W.* (1985) 175 Cal.App.3d 199, 203, fn. 7.) Here, Cesar knew the probation department recommended an aggregate term well before the disposition hearing and had an opportunity at the final disposition hearing to be heard on the issue.[2]

DISPOSITION

Appeal No. A149380 is dismissed. The May 31, 2017 commitment order at issue in appeal No. A151515 is affirmed.

[2] Cesar's January 16, 2019 request for judicial notice is denied. His February 12, 2019 request to file a supplemental brief is denied. (See *In re J.M.* (2019) 35 Cal.App.5th 999, 1009 [mental health diversion law does not apply to juveniles in delinquency proceedings].) His July 16, 2019, request to file a supplemental brief is granted; we address the merits in section B of the discussion, above.

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BURNS, J.

WE CONCUR:

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JONES, P. J.

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SIMONS, J.

A149380/A151515